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Mohd Rafizi Ramli & Anor v Public Prosecutor

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HIGH COURT (SHAH ALAM) — CRIMINAL TRIAL APPEAL
NOS BA-42K-7-03 OF 2018 AND BA-42K-8-03 OF 2018
MOHD YAZID J
15 NOVEMBER 2019

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Criminal Procedure — Prosecution — Prima facie case — Second appellant charged under s 112(c) read together with s 97(1) of the Banking and Financial Institutions Act 1989 (‘the BAFIA’) and punishable under s 103 of the BAFIA — Whether prima facie case proven against second appellant

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Evidence — Best evidence — Exceptions — Photocopied documents tendered as evidence — Prove of contents of documents — Admissibility of secondary evidence — Whether documents admissible under s 65(1)(c) of the Evidence Act 1950 — Evidence Act 1950 ss 64 & 65

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The first appellant was found guilty under s 97(1) of the Banking and Financial Institutions Act 1989 (‘the BAFIA’) punishable under s 103(1)(a) of the BAFIA whereas the second appellant was found guilty under s 112(c) read together with s 97(1) of the BAFIA and punishable under s 103 of the BAFIA. The offences were essentially in relation to disclosing the Public Bank’s customer profiles to Yusuf bin Abdul Alim (PW4) dan Erle Martin Carvelho (PW5). Both the appellants were sentenced to 30 months’ imprisonment from the date of sentencing. In the present appeal, the first appellant challenged the admissibility of the press statement, P4 and attachment A–D (‘the said documents’), which were all photocopied documents. In relation to the second appellant, the relevant facts were that the second appellant was a clerk in Public Bank Jinjang’s branch and based on CCTV recording on 16 February 2012, PW13 used the second appellant’s computer before the second appellant used it to access the said documents. The second appellant’s petition of appeal was on the failure of the prosecution to prove a prima facie case against the second appellant as per amended charge.

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Held, allowing the appeal, setting aside the sentence imposed by the sessions court judge and ordering acquittal and discharge of the appellants:

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- (1) The best evidence rule enshrined in s 64 of the Evidence Act 1950 (‘the Act’) provides that the contents of documents must be proved by primary evidence. This means a party seeking to rely on the contents of a document must produce the original where it is in existence and available. Section 65 of the Act allows the admission of copies of the

original document to be produced to prove its existence, condition and contents. Exceptions (a) and (c) under s 65 of the Act rest upon the principle that a party tendering a copy has done all that lies in his power to produce the original. Thus, basically, secondary evidence of the contents of a document is inadmissible, until the non-production of the original is first accounted for (see paras 13 & 15–17).

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- (2) Thus, the prosecution should have called a witness to testify that a sufficient search for the original document of P4 was carried out. Moreover, the witness should offer an explanation as to how the original document of P4 was lost or could not be found. The prosecution had called bank officers to testify, however the evidence of the witnesses failed to fulfill the above requirement in order for P4 to be admitted under the above requirements. Without this evidence, these document P4 and attachments A–D were not admissible under s 65(1)(c) of the Act (see para 20).

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- (3) The court found that PW13, the assistant manager of the Public Bank in Jinjang branch had accessed to the said account of PW1, particularly attachment A–D. Without the consent of PW13, the second appellant had no access to the said accounts of PW1. The CCTV footage showed that at the material time on 16 February 2012 the computer was first used by PW13 prior to second appellant. Based on this piece of evidence, the court agreed with the second appellant that the computer can be accessed and used by anyone else apart from second appellant to print out the above documents (see paras 22–23).

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- (4) In addition, the learned sessions court judge failed to consider the evidence of the investigation officer (PW19) that: (a) the initial investigation showed the main suspect was PW13; and (b) the second appellant had never contacted, met or handed over the said documents to the first appellant. Based on the above reasons, it was obvious that the prosecution had failed to prove that the second appellant had intended or had knowledge that the first appellant had revealed the contents of the said documents in order to commit the offence as per the charge. Therefore, there was no prima facie evidence to relate the involvement of the second appellant in this case (see paras 24–29).

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[Bahasa Malaysia summary]

Perayu pertama didapati bersalah di bawah s 97(1) Akta Bank dan Institusi-Institusi Kewangan 1989 ('Akta Bank') yang boleh dihukum di bawah s 103(1)(a) Akta Bank manakala perayu kedua didapati bersalah di bawah s 112(c) dibaca bersama s 97(1) Akta Bank dan boleh dihukum di bawah s 103 Akta Bank. Kesalahan tersebut pada dasarnya berkaitan dengan pendedahan profil pelanggan Public Bank kepada Yusuf bin Abdul Alim (PW4) dan Erle Martin Carvelho (PW5). Kedua-dua perayu dijatuhkan

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- A hukuman penjara 30 bulan dari tarikh hukuman. Dalam rayuan semasa, perayu pertama mencabar kebolehterimaan kenyataan akhbar, P4 dan lampiran A–D ('dokumen-dokumen tersebut'), yang semuanya adalah dokumen salinan. Berkaitan dengan perayu kedua, fakta yang relevan adalah bahawa perayu kedua adalah kerani di Public Bank cawangan Jinjang dan berdasarkan rakaman CCTV pada 16 Februari 2012, PW13 menggunakan komputer perayu kedua sebelum perayu kedua menggunakannya untuk mengakses dokumen-dokumen tersebut. Petition rayuan perayu kedua adalah berdasarkan kegagalan pihak pendakwaan membuktikan kes prima facie terhadap perayu kedua sebagaimana yang dinyatakan dalam pertuduhan pindaan.

Diputuskan, membenarkan rayuan, mengenyepikan hukuman yang dijatuhkan oleh hakim mahkamah sesyen dan memerintahkan pelepasan dan pembebasan perayu-perayu:

- D (1) Peraturan keterangan terbaik yang termaktub dalam s 64 Akta Keterangan 1950 ('Akta') menyatakan bahawa kandungan dokumen mesti dibuktikan dengan keterangan utama. Ini bermaksud pihak yang ingin bergantung pada kandungan dokumen mesti mengemukakan dokumen yang asal jika ia ada dan tersedia. Seksyen 65 Akta membenarkan penerimaan salinan dokumen asal dikemukakan untuk membuktikan kewujudan, keadaan dan kandungannya. Pengecualian (a) dan (c) di bawah s 65 Akta bergantung pada prinsip bahawa pihak yang mengemukakan salinan telah melakukan semua usaha di dalam kuasanya untuk mengemukakan dokumen asal. Oleh itu, pada asasnya, keterangan sekunder mengenai kandungan dokumen tidak boleh diterima, sehingga kegagalan untuk mengemukakan dokumen asal terlebih dahulu dijelaskan (lihat perenggan 13 & 15–17).
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- G (2) Oleh itu, pihak pendakwaan seharusnya memanggil saksi untuk memberi keterangan bahawa pencarian yang mencukupi bagi dokumen P4 yang asal telah dilakukan. Selain itu, saksi harus memberikan penjelasan mengenai bagaimana dokumen asal P4 hilang atau tidak dapat dijumpai. Pihak pendakwaan telah memanggil pegawai bank untuk memberi keterangan, namun keterangan saksi gagal memenuhi syarat di atas bagi membolehkan P4 diterima di bawah syarat di atas. Tanpa keterangan ini, dokumen P4 dan lampiran A–D ini tidak boleh diterima di bawah s 65(1)(c) Akta (lihat perenggan 20).
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- I (3) Mahkamah mendapati bahawa PW13, penolong pengurus Public Bank di cawangan Jinjang telah mengakses akaun PW1 tersebut, terutama lampiran A–D. Tanpa persetujuan PW13, perayu kedua tidak mempunyai akses ke akaun PW1 tersebut. Rakaman CCTV menunjukkan bahawa pada masa material pada 16 Februari 2012 komputer tersebut pada mulanya digunakan oleh PW13 sebelum perayu

kedua. Berdasarkan keterangan ini, mahkamah bersetuju dengan perayu kedua bahawa komputer tersebut dapat diakses dan digunakan oleh orang lain selain dari perayu kedua untuk mencetak dokumen di atas (lihat perenggan 22–23).

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- (4) Di samping itu, hakim mahkamah sesyen yang bijaksana gagal mempertimbangkan keterangan pegawai penyiasat (PW19) bahawa: (a) siasatan awal menunjukkan suspek utama adalah PW13; dan (b) perayu kedua tidak pernah menghubungi, bertemu atau menyerahkan dokumen-dokumen tersebut kepada perayu pertama. Berdasarkan alasan-alasan di atas, jelas bahawa pihak pendakwaan gagal membuktikan bahawa perayu kedua berniat atau mengetahui bahawa perayu pertama telah mendedahkan isi dokumen-dokumen tersebut untuk melakukan kesalahan tersebut sebagaimana yang didakwa. Oleh itu, tidak ada keterangan prima facie yang mengaitkan penglibatan perayu kedua dalam kes ini (lihat perenggan 24–29).]

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Cases referred to

Bhubaneswari v Harisaran [1881] 6 Cal 720 (refd)

KPM Khidmat Sdn Bhd v Tey Kim Suie [1994] 2 MLJ 627; [1994] 3 CLJ 1; [1994] 2 AMR 1417, SC (refd)

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Krishnakishori v Kishori 14 IA 71 (refd)

Popular Industries Limited v Eastern Garment Manufacturing Sdn Bhd [1989] 3 MLJ 360; [1990] 1 CLJ 133; [1990] 2 CLJ Rep 635, HC (refd)

Syarikat Jengka Sdn Bhd v Abdul Rashid bin Harun [1981] 1 MLJ 201; [1980] 1 LNS 125, FC (refd)

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Tan Sri Tan Hian Tsin v PP [1979] 1 MLJ 73; [1978] 1 LNS 199, FC (refd)

Legislation referred to

Banking and Financial Institutions Act 1989 (repealed by the Financial Services Act 2013) ss 97(1), 103(1)(a)

Criminal Procedure Code s 180, Chapter 5

Evidence Act 1950 ss 63(b), 64, 65, 65(1)(c)

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Mohd Yazid J:

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Charge against the first appellant reads as follows:

Bahawa kamu pada 7 Mac 2012 di Ibu Pejabat Parti Keadilan Rakyat, A-1-09, Merchant Square, No 1 Jalan Tropicana Selatan 1, 47410 Petaling Jaya, dalam Daerah Petaling, dalam Negeri Selangor, yang mempunyai akses kepada dokumen berhubung dengan hal ehwal akaun di Bank Public Bank Berhad, iaitu:

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- (a) Customer Profile — Balance Summary National Feedlot Corporation Sdn Bhd;

- A** (b) Customer Profile — Balance Summary National Meat and Livestock Sdn Bhd;
- (c) Customer Profile — Balance Summary Agrosience Industries Sdn Bhd;
- (d) Customer Profile — Balance Summary Mohamad Salleh bin Ismail,
- B** telah menzahirkan dokumen tersebut kepada Yusuf bin Abdul Alim dan Erle Martin Carvelho dan oleh yang demikian kamu telah melakukan satu kesalahan di bawah s 97(1) Akta Bank dan Institusi-Institusi Kewangan 1989 (Akta 372) yang boleh dihukum dibawah s 103(1)(a) Akta yang sama dibaca bersama Nombor Siri 126 dalam Jadual Keempat Akta yang sama.

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Amended charge against the second appellant reads as follows:

- D** Bahawa pada 7 Mac 2012 di Ibu Pejabat Parti Keadilan Rakyat, A-1-09, Merchant Square, No 1 Jalan Tropicana Selatan 1, 47410 Petaling Jaya, dalam Daerah Petaling, dalam Negeri Selangor, Mohd Rafizi bin Ramli telah melakukan kesalahan menzahirkan dokumen berhubung dengan hal ehwal akaun di Bank Public Bank Berhad, iaitu:
- (a) Customer Profile — Balance Summary National Feedlot Corporation Sdn Bhd;
- E** (b) Customer Profile — Balance Summary National Meat and Livestock Sdn Bhd;
- (c) Customer Profile — Balance Summary Agrosience Industries Sdn Bhd;
- F** (d) Customer Profile — Balance Summary Mohamad Salleh bin Ismail,
- kepada Yusuf bin Abdul Alim dan Erle Martin Carvelho, di mana kesalahan tersebut telah dilakukan hasil daripada persubahatan kamu dengan mendapatkan dokumen-dokumen tersebut dari Public Bank Berhad Cawangan Jinjang Kuala Lumpur dan oleh yang demikian kamu telah melakukan satu kesalahan di bawah s 112(c) Akta Bank dan Institusi-Institusi Kewangan 1989 (Akta 372) dibaca bersama s 97(1) Akta yang sama yang boleh dihukum di bawah s 103 Akta yang sama dibaca bersama Nombor Siri 126 dalam Jadual Keempat Akta yang sama.
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H [1] Both the appellants were convicted and sentenced by the learned sessions court judge to 30 months' imprisonment from the date of sentencing (7 February 2018). Dissatisfied with the said decision, the appellants filed appeals to this court.

I [2] For the factual background of this case, I find the learned sessions court judge had set out fully and clearly (see paras 3–36 of the judgment).

[3] I have read the petitions of appeal of both the appellants and I find the gist of first appellant's petition of appeal is on a point of law where it relates to the admissibility of press statement, P4 and *lampiran* A–D. The second

appellant's petition of appeal is on the failure of the prosecution to prove a prima facie case against the second appellant as per amended charge.

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[4] Based on the evidence of the prosecution, SP4 and SP5 had attended the press conference held at the time and place as per the charge in which first appellant revealed and discussed the contents of *lampiran* A–D with those present. Those present given photocopies of the press statement and the contents of *lampiran* A–D. PW4 made some remarks on the documents. The documents with remarks made by PW4 were handed over to PW2 who read and found out they were confidential documents in which PW2 later instructed PW3 who was the secretary of PW1 to photocopy them. PW3 noticed that *lampiran* A–D contained the details of personal account of PW1 and his family's accounts with Public Bank with which she was very familiar. PW2 then handed over the documents to PW1. Subsequently, PW1 wrote a letter to Bank Negara Malaysia (BNM) and lodged police report on this issue.

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[5] PW6 (Director Human Capital Management Public Bank) and PW9 (Branch Manager of Public Bank's Jinjang) confirmed that second appellant was a clerk with a Public Bank Jinjang's branch who was attached to the credit unit processing/review bill and the scope of his work was to process the loan application.

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[6] As a result of the complaint by PW1, BNM had conducted investigation and seized a computer from the workplace of second appellant. Based on CCTV recording on 16 February 2012, PW13 used the computer before the second appellant used it.

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[7] Based on the above facts, the learned sessions court judge made a finding of facts that the prosecution has proved that the first appellant had accessed to the documents in relations to *Hal Ehwal Akaun* of the Public Bank namely *lampiran* A–D. He further satisfied that the first appellant had revealed the above said documents to Yusuf bin Abdul Alim (PW4) and Erle Martin Carvelho (PW5) on the date and place as per charge.

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[8] The learned sessions court judge had ruled that there was no necessity for the prosecution to prove mens rea under s 97(1) of the BAFIA as it is a strict liability offence. Under s 97(1) of the BAFIA, it is clearly stated that there is a requirement to establish the actus reus of the said offence, which means that when someone has access to the said documents and subsequently reveals any information relating to the affairs of an account of such customer of itself is an offence under s 97(1) of the BAFIA. I agree with this finding.

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[9] The learned sessions court judge also made a finding that the prosecution has established a prima facie case on the amended charge against the second

- A appellant whereby the second appellant had wrongly extracted *lampiran* A–D from BDS Public Bank Jinjang’s branch and the said *lampiran* was later revealed by first appellant at the press conference held on 7 May 2015.
- B [10] Both the appellants elected to give evidence on sworn oath. At the end of defence case, the learned sessions court judge held that the defence of the second appellant had failed to raise a reasonable doubt on the prosecution’s case as it was a mere denial. For the first appellant, the learned sessions court judge made the finding that it was impossible for the first appellant who was highly educated and experienced person not to be aware of the confidentiality of the said documents. Hence, the learned sessions court judge found that the first
- C appellant had failed to cast a reasonable doubt on the prosecution’s case.
- D [11] Based on the petitions of the appeal and the written submission of learned counsel for the first appellant, I find that the main issue pertaining to charge against the first appellant is purely on point of law.
- E [12] After reading the evidence of the prosecution witnesses especially PW4, PW2 and PW3, I find that the press statement, P4 and the documents of *lampiran* A–D are photocopied documents. There are some handwriting of P4 on the said photocopied documents. The photocopied documents with the handwriting of P4 had been handed over by PW4 to his superior, PW2 who later handed over to PW3 with the instruction to make a photocopy. After making of a photocopy, PW3 had misplaced and lost the said documents
- F which she had received from PW2. At this juncture, the main issue for the court to decide is whether the said documents which were photocopied and received by PW4 was correctly admitted and marked as P4 together with *lampiran* A–D.
- G [13] Here, I find it is necessary to set out the principles applicable on the mode of tendering and proving the contents of documentary evidence. Chapter 5 of the Evidence Act 1950 deals with the mode of proving documentary evidence. The provisions in this chapter have been extensively considered and construed in numerous decisions. I start with the best evidence
- H rule enshrined in s 64 of the Act which provides that the contents of documents must be proved by primary evidence. This means a party seeking to rely on the contents of a document must produce the original where it is in existence and available.
- I [14] The importance of this rule is illustrated by the judgment of Edgar Joseph Jr J (as he then was) in *Popular Industries Limited v Eastern Garment Manufacturing Sdn Bhd* [1989] 3 MLJ 360; [1990] 1 CLJ 133; [1990] 2 CLJ Rep 635. In that case, the plaintiff company tried to prove its claim for damages for loss of profits by calling as a witness its accountant. The accountant who

testified produced a sheet of calculations (exh P76) which was meant to show the estimated losses suffered by the plaintiff as a consequence of the defendant's failure to deliver the goods. The plaintiff contended that the oral testimony of the accountant and his calculations as tendered to court were based on the results of his examination of the account books of the plaintiff. The account books were never produced and the defendant never dispensed with formal proof of the loss of profits claimed by the plaintiff. The non-production of the books of account, the original document, was held to be fatal to the claim of the loss of profits.

In his judgment, Edgar Joseph Jr J explained as follows:

It is a firmly established rule (to which there are exceptions) requiring that when documentary evidence is tendered, primary evidence of the document, that is to say the production of the documents itself is essential (see s 65 of the Evidence Act).

...

In the present case, the plaintiffs made not the slightest attempt to discharge that burden, with the result that P76 which was alleged to be extracted from the books of accounts of the plaintiffs, which were never produced, was inadmissible in evidence. Similarly, the oral evidence of the accountant Mr So, which was based on P76, was also inadmissible for the same reason.

[15] Section 65 of the Act allows the admission of copies of the original document to be produced to prove its existence, condition and contents. It reads:

(1) Secondary evidence may be given of the existence, condition or contents of a document admissible in evidence in the following cases:

- (a) where the original is shown or appears to be in the possession or power
 - (i) of the person against whom the document is sought to be proved;
 - (ii) of any person out of reach of or not subject to the process of the court; or
 - (iii) of any person legally bound to produce it, and when after the notice mentioned in s 66 such person does not produce it;
- (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;
- (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot for any reason not arising from his own default or neglect produce it in reasonable time;
- (d) when the original is of such a nature as not to be easily movable;

- A** (e) when the original is a public document within the meaning of s 74;
- (f) when the original is a document of which a certified copy is permitted by this Act or by any other law in force for the time being in Malaysia to be given in evidence;
- B** (g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection.
- (2)(a) In the cases referred to in sub-ss (1)(a), (c) and (d) any secondary evidence of the contents of the document is admissible;
- C** (b) In the case referred to in sub-s (1)(b), the written admission is admissible;
- (c) In the case referred to in sub-s (1)(e) or (f) a certified copy of the document but no other kind of secondary evidence is admissible;
- D** (d) In the case referred to in sub-s (1)(g), evidence may be given as to the general result of the documents by any person who has examined them and is skilled in the examination of such documents.

- E** [16] The then Supreme Court had occasion to deal with the scope of s 65 in *KPM Khidmat Sdn Bhd v Tey Kim Suie* [1994] 2 MLJ 627; [1994] 3 CLJ 1; [1994] 2 AMR 1417. His Lordship Gunn Chit Tuan SCJ (as he then was) in delivering the judgment of the court said at p 632 (MLJ); p 5 (CLJ):

- On the principle and scope of s 65, we respectfully rely on the commentary in *Sarkar on Evidence* (at pp 964–965):

- F** ... (But) secondary evidence of an ordinary document is admissible only when the party desirous of admitting it has proved that he has no possession or control of it and further that he has done what can be done to procure the production of it. He has to account for the non-production in one of the ways indicated in this section (*Krishnakishori v Kishori* 14 IA 71, 14 C 486; *Shambati v Jogo* 29 C 749; *Bhubaneswari v Harisaran* 6 C 720). When original account books are available
- G** copies are not admissible (*Jainarain v Zubeda A* 1972 A 494).

- H** Exceptions (a) and (c) rest upon the principle that a party tendering a copy has done all that lies in his power to produce the original.

- [17] Thus, basically, secondary evidence of the contents of a document is inadmissible, until the non-production of the original is first accounted for, so as to bring it within one or other of the cases provided for in the section
- I** (*Krishnakishori v Kishori* 14 IA 71; and *Bhubaneswari v Harisaran* [1881] 6 Cal 720).

- [18] In *Tan Sri Tan Hian Tsin v PP* [1979] 1 MLJ 73; [1978] 1 LNS 199, the secondary evidence in the form of photostat copies was admitted after the

Federal Court was satisfied that a sufficient search was made and the originals could not be discovered. Justice Chang Min Tat FJ had this to say:

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Now what were produced in court was not the original Tatung's documents but photo-stat copies thereof which Ho, in his disquiet about the propriety of the whole transaction, made for his own protection, and then kept in his personal file. The question of admissibility arose. Ho said that the originals were with Folex and of course, being *primary* evidence, the originals should be produced. But there was evidence from Joseph Tay that after a search of the Company's records which he carried out at the request of the Police, he could not discover the originals and in the circumstances, secondary evidence of the documents becomes available under the combined provisions of ss 65 and 63(b) of the Evidence Act 1950. (Emphasis added.)

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[19] A photocopy, being a copy made from the original by a mechanical process within the meaning of s 63(b), is undoubtedly secondary evidence, and would be available as evidence only 'under the combined provisions of ss 65 and 63(b) of the Evidence Act 1950' (see *Tan Sri Tan Hian Tsin v PP* [1979] 1 MLJ 73 at 76; [1978] 1 LNS 199), and would not be if an explanation is not given why the original is not produced (see *Syarikat Jengka Sdn Bhd v Abdul Rashid bin Harun* [1981] 1 MLJ 201; [1980] 1 LNS 125). The explanation must of course satisfy one of the conditions of s 65.

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[20] Thus, the prosecution should have called a witness to testify that a sufficient search for the original document of P4 was carried out. Moreover, the witness should offer an explanation as to how the original document of P4 was lost or could not be found. The prosecution had called bank officers to testify, however the evidence of the witnesses failed to fulfill the above requirement in order for P4 to be admitted under the above requirements. Without this evidence, these document P4 and *lampiran* A–D are not admissible under s 65(1)(c) of the Evidence Act 1950.

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[21] Based on the above reasons, I hereby allow the appeal of first appellant and set aside the conviction and sentence of 30 months imprisonment imposed by the learned sessions court judge. I hereby order an acquittal and discharge of the first appellant.

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[22] Now coming to the second appellant's case, I have scrutinised the evidence of the prosecution witnesses where this court finds that PW13, the assistant manager of the Public Bank in Jinjang branch had accessed to the said account of PW1, particularly *lampiran* A–D. Without the consent of PW13, the second appellant had no access to the said accounts of PW1. During cross-examination, PW13 has agreed that he had breached the rules and regulations of the bank by sharing his personal computer ID with others. Based

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A on this, I find in this case, the second appellant had access to the above documents.

B [23] Furthermore, the CCTV footage showed that at the material time on 16 February 2012 the computer was first used by PW13 prior to second appellant. Based on this piece of evidence, learned counsel for the second appellant had submitted that the computer can be accessed and used by anyone else apart from second appellant to print out the above documents. This court agreed with this submission.

C [24] The prosecution's case against second appellant was also collapsed by reason of evidence of PW19 who was the investigation officer. PW19 in his evidence agreed with the learned defence counsel that the initial investigation showed the main suspect was PW13.

D [25] This material evidence was not considered at all by the learned sessions court judge in his judgment.

E [26] The second appellant's learned counsel further submitted that there was no evidence to establish the second appellant had submitted the said documents to the first appellant. As to that, the PW19 who is the investigation officer from Bank Negara had agreed during cross-examination that the second appellant had never contacted, met or handed over the above documents to the first appellant.

F [27] The above evidence as per para [26] was also not considered by the learned sessions court judge in his judgment.

G [28] Based on the above reasons, it is obvious that the prosecution has failed to prove that the second appellant had intended or had knowledge that the first appellant had revealed the contents of the said documents in order to commit the offence as per the charge. The conviction and sentence of the second appellant is hereby set aside.

H [29] I find as a whole that there is no prima facie evidence to relate the involvement of the second appellant in this case. It is trite law that a prima facie case means that there is sufficient credible evidence to establish the elements of the said charge against the second appellant. Case law and s 180 of the Criminal Procedure Code clearly stated the requirement in establishing a prima facie case against the second appellant.

I [30] I hereby allow the appeal of the second appellant as there is no prima facie case against second appellant and set aside the conviction and sentence of

30 months' imprisonment. I hereby acquit and discharge the second appellant of the amended charge.

Appeal allowed; sentence imposed by sessions court judge set aside; appellants acquitted and discharged.

Reported by Dzulqarnain Ab Fatar

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